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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 KEITH COSBY,

12 Petitioner,

13 v.

14 FELIZ VASQUEZ, Warden,

15 Respondent.

Case No.: 16-0639 GPC (MDD)

**SUMMARY DISMISSAL OF
SUCCESSIVE PETITION
PURSUANT TO 28 U.S.C.
§ 2244(b)(3)(A) GATEKEEPER
PROVISION**

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17 Petitioner, Keith Cosby, a state prisoner proceeding pro se, has filed a Petition for
18 Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. He has not paid the \$5.00 fee and
19 has not moved to proceed in forma pauperis. The Court does not rule on Petitioner's in
20 forma pauperis status because this case is summarily dismissed pursuant to 28 U.S.C.
21 § 2244(b)(3)(A) as indicated below.

22 **PETITION BARRED BY GATEKEEPER PROVISION**

23 The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner
24 has submitted to this Court challenging his October 26, 1988 conviction in San Diego
25 Superior Court case No. CR-84617. On October 12, 1993, Petitioner filed in this Court a
26 Petition for Writ of Habeas Corpus in case No. 93cv1554 R (LSP). In that petition,
27 Petitioner challenged his conviction in San Diego Superior Court case No. CR-84617 as
28 well. On January 4, 1996, this Court denied the petition on the merits. (See Order filed

1 January 4, 1996 in case No. 93cv1554 R (LSP) [Doc. No. 18].) Petitioner did not appeal
2 that determination.

3 On February 11, 2004, Petitioner filed in this Court a Petition for Writ of Habeas
4 Corpus in case No. 04cv0292 W (JMA). In that petition, Petitioner again challenged his
5 conviction in San Diego Superior Court case No. CR-84617. On February 23, 2004, this
6 Court dismissed the petition as successive pursuant to 28 U.S.C. § 2244(b)(3)(A). (*See*
7 Order filed February 23, 2004 in case No. 04cv0292 W (JMA) [Doc. No. 2].) Petitioner
8 did not appeal that determination.

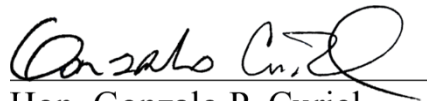
9 Petitioner is now seeking to challenge the same conviction he challenged in his
10 prior federal habeas petitions. Unless a petitioner shows he or she has obtained an Order
11 from the appropriate court of appeals authorizing the district court to consider a
12 successive petition, the petition may not be filed in the district court. *See* 28 U.S.C.
13 § 2244(b)(3)(A). Here, there is no indication the Ninth Circuit Court of Appeals has
14 granted Petitioner leave to file a successive petition.

15 CONCLUSION

16 Because there is no indication Petitioner has obtained permission from the Ninth
17 Circuit Court of Appeals to file a successive petition, this Court cannot consider his
18 Petition. Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner
19 filing a petition in this court if he obtains the necessary order from the Ninth Circuit
20 Court of Appeals. *The Clerk of Court is directed to mail Petitioner a blank Application*
21 *to File a Second or Successive Petition or Motion Under 28 U.S.C. § 2254 together*
22 *with a copy of this Order.*

23 **IT IS SO ORDERED.**

24 Dated: March 23, 2016

25 
26 Hon. Gonzalo P. Curiel
27 United States District Judge
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